

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1320
OFFERED BY M.

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Commercial Spectrum
3 Enhancement Act”.

4 SEC. 2. RELOCATION OF ELIGIBLE FEDERAL ENTITIES FOR
5 THE REALLOCATION OF SPECTRUM FOR
6 COMMERCIAL PURPOSES.

7 Section 113(g) of the National Telecommunications
8 and Information Administration Organization Act (47
9 U.S.C. 923(g)) is amended by striking paragraphs (1)
10 through (3) and inserting the following:—

11 “(1) ELIGIBLE FEDERAL ENTITIES.—Any Fed-
12 eral entity that operates a Federal Government sta-
13 tion assigned to a band of frequencies specified in
14 paragraph (2) and that incurs relocation costs be-
15 cause of the reallocation of frequencies from Federal
16 use to non-Federal use shall receive payment for
17 such costs from the Spectrum Relocation Fund, in
18 accordance with section 118 of this Act. For pur-
19 poses of this paragraph, Federal power agencies ex-



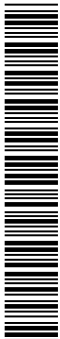
1 empted under subsection (c)(4) that choose to relo-
2 cate from the frequencies identified for reallocation
3 pursuant to subsection (a), are eligible to receive
4 payment under this paragraph.

5 “(2) ELIGIBLE FREQUENCIES.—The bands of
6 eligible frequencies for purposes of this section are
7 as follows:

8 “(A) the 216-220 megahertz band, the
9 1432-1435 megahertz band, the 1710–1755
10 megahertz band, and the 2385-2390 megahertz
11 band of frequencies; and

12 “(B) any other band of frequencies reallo-
13 cated from Federal use to non-Federal use after
14 January 1, 2003, that is assigned by competi-
15 tive bidding pursuant to section 309(j) of the
16 Communications Act of 1934 (47 U.S.C.
17 309(j)), except for bands of frequencies pre-
18 viously identified by the National Telecommuni-
19 cations and Information Administration in the
20 Spectrum Reallocation Final Report, NTIA
21 Special Publication 95-32 (1995).

22 “(3) DEFINITION OF RELOCATION COSTS.—For
23 purposes of this subsection, the term ‘relocation
24 costs’ means the costs incurred by a Federal entity
25 to achieve comparable capability of systems, regard-



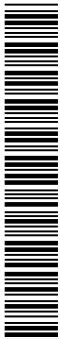
1 less of whether that capability is achieved by relo-
2 cating to a new frequency assignment or by utilizing
3 an alternative technology. Such costs include—

4 “(A) the costs of any modification or re-
5 placement of equipment, software, facilities, op-
6 erating manuals, training costs, or regulations
7 that are attributable to relocation;

8 “(B) the costs of all engineering, equip-
9 ment, software, site acquisition and construc-
10 tion costs, as well as any legitimate and pru-
11 dent transaction expense, including outside con-
12 sultants, and reasonable additional costs in-
13 curred by the Federal entity that are attrib-
14 utable to relocation, including increased recur-
15 ring costs associated with the replacement fa-
16 cilities;

17 “(C) the costs of engineering studies, eco-
18 nomic analyses, or other expenses reasonably
19 incurred in calculating the estimated relocation
20 costs that are provided to the Commission pur-
21 suant to paragraph (4) of this subsection;

22 “(D) the one-time costs of any modifica-
23 tion of equipment reasonably necessary to ac-
24 commodate commercial use of such frequencies
25 prior to the termination of the Federal entity’s



1 primary allocation or protected status, when the
2 eligible frequencies as defined in paragraph (2)
3 of this subsection are made available for private
4 sector uses by competitive bidding and a Fed-
5 eral entity retains primary allocation or pro-
6 tected status in those frequencies for a period
7 of time after the completion of the competitive
8 bidding process; and

9 “(E) the costs associated with the acceler-
10 ated replacement of systems and equipment if
11 such acceleration is necessary to ensure the
12 timely relocation of systems to a new frequency
13 assignment.

14 “(4) NOTICE TO COMMISSION OF ESTIMATED
15 RELOCATION COSTS.—

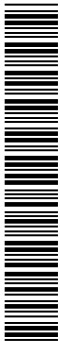
16 “(A) The Commission shall notify the
17 NTIA at least 18 months prior to the com-
18 mencement of any auction of eligible fre-
19 quencies defined in paragraph (2). At least 6
20 months prior to the commencement of any such
21 auction, the NTIA, on behalf of the Federal en-
22 tities and after review by the Office of Manage-
23 ment and Budget, shall notify the Commission
24 of estimated relocation costs and timelines for
25 such relocation.



1 “(B) Upon timely request of a Federal en-
2 tity, the NTIA shall provide such entity with in-
3 formation regarding an alternative frequency
4 assignment or assignments to which their
5 radiocommunications operations could be relo-
6 cated for purposes of calculating the estimated
7 relocation costs and timelines to be submitted
8 to the Commission pursuant to subparagraph
9 (A).

10 “(C) To the extent practicable and con-
11 sistent with national security considerations,
12 the NTIA shall provide the information re-
13 quired by subparagraphs (A) and (B) by the ge-
14 ographic location of the Federal entities’ facili-
15 ties or systems and the frequency bands used
16 by such facilities or systems.

17 “(5) NOTICE TO CONGRESSIONAL COMMITTEES
18 AND GAO.—The NTIA shall, at the time of providing
19 an initial estimate of relocation costs to the Commis-
20 sion under paragraph (4)(A), submit to the Commit-
21 tees on Appropriations and Energy and Commerce
22 of the House of Representatives, the Committees on
23 Appropriations and Commerce, Science, and Trans-
24 portation of the Senate, and the Comptroller Gen-

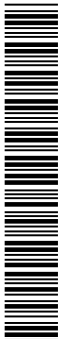


1 eral a copy of such estimate and the timelines for re-
2 location.

3 “(6) IMPLEMENTATION OF PROCEDURES.—The
4 NTIA shall take such actions as necessary to ensure
5 the timely relocation of Federal entities’ spectrum-
6 related operations from frequencies defined in para-
7 graph (2) to frequencies or facilities of comparable
8 capability. Upon a finding by the NTIA that a Fed-
9 eral entity has achieved comparable capability of sys-
10 tems by relocating to a new frequency assignment or
11 by utilizing an alternative technology, the NTIA
12 shall terminate the entity’s authorization and notify
13 the Commission that the entity’s relocation has been
14 completed. The NTIA shall also terminate such enti-
15 ty’s authorization if the NTIA determines that the
16 entity has unreasonably failed to comply with the
17 timeline for relocation submitted by the Director of
18 the Office of Management and Budget under section
19 118(d)(2)(B).”.

20 **SEC. 3. MINIMUM AUCTION RECEIPTS AND DISPOSITION OF**
21 **PROCEEDS.**

22 (a) AUCTION DESIGN.—Section 309(j)(3) of the
23 Communications Act of 1934 (47 U.S.C. 309(j)(3)) is
24 amended—



1 (1) by striking “and” at the end of subpara-
2 graph (D);

3 (2) by striking the period at the end of sub-
4 paragraph (E) and inserting “; and”; and

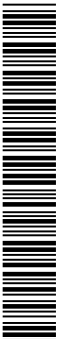
5 (3) by adding at the end the following new sub-
6 paragraph:

7 “(F) for any auction of eligible frequencies
8 described in section 113(g)(2) of the National
9 Telecommunications and Information Adminis-
10 tration Organization Act (47 U.S.C. 923(g)(2)),
11 the recovery of 110 percent of estimated reloca-
12 tion costs as provided to the Commission pursu-
13 ant to section 113(g)(4) of such Act.”.

14 (b) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE
15 FREQUENCIES.—Section 309(j) of such Act is further
16 amended by adding at the end the following new para-
17 graph:

18 “(15) SPECIAL AUCTION PROVISIONS FOR ELI-
19 GIBLE FREQUENCIES.—

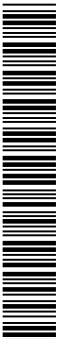
20 “(A) SPECIAL REGULATIONS.—The Com-
21 mission shall revise the regulations prescribed
22 under paragraph (4)(F) of this subsection to
23 prescribe methods by which the total cash pro-
24 ceeds from any auction of eligible frequencies
25 described in section 113(g)(2) of the National



1 Telecommunications and Information Adminis-
2 tration Organization Act (47 U.S.C. 923(g)(2))
3 shall at least equal 110 percent of the total esti-
4 mated relocation costs provided to the Commis-
5 sion pursuant to section 113(g)(4) of such Act.

6 “(B) CONCLUSION OF AUCTIONS CONTIN-
7 GENT ON MINIMUM PROCEEDS.—The Commis-
8 sion shall not conclude any auction of eligible
9 frequencies described in section 113(g)(2) of
10 such Act if the total cash proceeds attributable
11 to such spectrum are less than 110 percent of
12 the total estimated relocation costs provided to
13 the Commission pursuant to section 113(g)(4)
14 of such Act. If the Commission is unable to
15 conclude an auction for the foregoing reason,
16 the Commission shall cancel the auction, return
17 within 45 days after the auction cancellation
18 date any deposits from participating bidders
19 held in escrow, and absolve such bidders from
20 any obligation to the United States to bid in
21 any subsequent reauction of such spectrum.

22 “(C) AUTHORITY TO ISSUE PRIOR TO DE-
23 AUTHORIZATION.—In any auction conducted
24 under the regulations required by subparagraph
25 (A), the Commission may grant a license as-



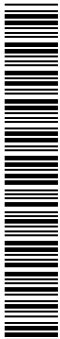
1 signed for the use of eligible frequencies prior
2 to the termination of an eligible Federal entity's
3 authorization. However, the Commission shall
4 condition such license by requiring that the li-
5 censee cannot cause harmful interference to
6 such Federal entity until such entity's author-
7 ization has been terminated by the National
8 Telecommunications and Information Adminis-
9 tration.”.

10 (c) DEPOSIT OF PROCEEDS.—Paragraph (8) of sec-
11 tion 309(j) of the Communications Act of 1934 (47 U.S.C.
12 309(j)) is amended—

13 (1) in subparagraph (A), by inserting “or sub-
14 paragraph (D)” after “subparagraph (B)”; and

15 (2) by adding at the end the following new sub-
16 paragraph:

17 “(D) DISPOSITION OF CASH PROCEEDS.—
18 Cash proceeds attributable to the auction of any
19 eligible frequencies described in section
20 113(g)(2) of the National Telecommunications
21 and Information Administration Organization
22 Act (47 U.S.C. 923(g)(2)) shall be deposited in
23 the Spectrum Relocation Fund established
24 under section 118 of such Act, and shall be
25 available in accordance with that section.”.



1 **SEC. 4. ESTABLISHMENT OF FUND AND PROCEDURES.**

2 Part B of the National Telecommunications and In-
3 formation Administration Organization Act is amended by
4 adding after section 117 (47 U.S.C. 927) the following
5 new section:

6 **“SEC. 118. SPECTRUM RELOCATION FUND.**

7 “(a) ESTABLISHMENT OF SPECTRUM RELOCATION
8 FUND.—There is established on the books of the Treasury
9 a separate fund to be known as the ‘Spectrum Relocation
10 Fund’ (in this section referred to as the ‘Fund’), which
11 shall be administered by the Office of Management and
12 Budget (in this section referred to as ‘OMB’), in consulta-
13 tion with the NTIA.

14 “(b) CREDITING OF RECEIPTS.—The Fund shall be
15 credited with the amounts specified in section
16 309(j)(8)(D) of the Communications Act of 1934 (47
17 U.S.C. 309(j)(8)(D)).

18 “(c) USED TO PAY RELOCATION COSTS.—The
19 amounts in the Fund from auctions of eligible frequencies
20 are authorized to be used to pay relocation costs, as de-
21 fined in section 113(g)(3) of this Act, of an eligible Fed-
22 eral entity incurring such costs with respect to relocation
23 from those frequencies.

24 “(d) FUND AVAILABILITY.—

25 “(1) APPROPRIATION.—There are hereby ap-
26 propriated from the Fund such sums as are required



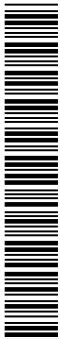
1 to pay the relocation costs specified in subsection
2 (c).

3 “(2) TRANSFER CONDITIONS.—None of the
4 funds provided under this subsection may be trans-
5 ferred to any eligible Federal entity—

6 “(A) unless the Director of OMB has de-
7 termined, in consultation with the NTIA, the
8 appropriateness of such costs and the timeline
9 for relocation; and

10 “(B) until 30 days after the Director of
11 the OMB has submitted to the Committees on
12 Appropriations and Energy and Commerce of
13 the House of Representatives, the Committees
14 on Appropriations and Commerce, Science, and
15 Transportation of the Senate, and the Comp-
16 troller General a detailed plan describing how
17 the sums transferred from the Fund will be
18 used to pay relocation costs in accordance with
19 such subsection and the timeline for such relo-
20 cation.

21 “(3) REVERSION OF UNUSED FUNDS.—Any un-
22 expended balances in the Fund that are remaining
23 after the payment of the relocation costs that are
24 payable from the Fund shall revert to and be depos-
25 ited in the general fund of the Treasury not later



1 than 8 years after the date of the initial deposit to
2 the Fund.

3 “(e) TRANSFER TO ELIGIBLE FEDERAL ENTITIES.—

4 “(1) TRANSFER.—

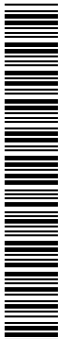
5 “(A) Amounts made available pursuant to
6 subsection (d) shall be transferred to eligible
7 Federal entities, as defined in section 113(g)(1)
8 of this Act.

9 “(B) An eligible Federal entity may receive
10 more than one such transfer, but if the sum of
11 the subsequent transfer or transfers exceeds 10
12 percent of the original transfer—

13 “(i) such subsequent transfers are
14 subject to prior approval by the Director of
15 OMB as required by subsection (d)(2)(A);

16 “(ii) the notice to the committees con-
17 taining the plan required by subsection
18 (d)(2)(B) shall be not less than 45 days
19 prior to the date of the transfer that
20 causes such excess above 10 percent;

21 “(iii) such notice shall include, in ad-
22 dition to such plan, a explanation of need
23 for such subsequent transfer or transfers;
24 and



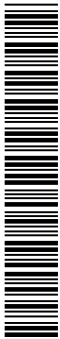
1 “(iv) the Comptroller General shall,
2 within 30 days after receiving such plan,
3 review such plan and submit to such com-
4 mittees an assessment of the explanation
5 for the subsequent transfer or transfers.

6 “(C) Such transferred amounts shall be
7 credited to the appropriations account of the el-
8 igible Federal entity which has incurred, or will
9 incur, such costs, and shall, subject to para-
10 graph (2), remain available until expended.

11 “(2) RETRANSFER TO FUND.—An eligible Fed-
12 eral entity that has received such amounts shall re-
13 port its expenditures to OMB and shall transfer any
14 amounts in excess of actual relocation costs back to
15 the Fund immediately after the NTIA has notified
16 the Commission that the entity’s relocation is com-
17 plete, or has determined that such entity has unrea-
18 sonably failed to complete such relocation in accord-
19 ance with the timeline required by subsection
20 (d)(2)(A).”.

21 **SEC. 5. TELECOMMUNICATIONS DEVELOPMENT FUND.**

22 Section 714(f) of the Communications Act of 1934
23 (47 U.S.C. 614(f)) is amended to read as follows:



1 “(f) LENDING AND CREDIT OPERATIONS.—Loans or
2 other extensions of credit from the Fund shall be made
3 available to an eligible small business on the basis of—

4 “(1) the analysis of the business plan of the eli-
5 gible small business;

6 “(2) the reasonable availability of collateral to
7 secure the loan or credit extension;

8 “(3) the extent to which the loan or credit ex-
9 tension promotes the purposes of this section; and

10 “(4) other lending policies as defined by the
11 Board.”.

12 **SEC. 6. CONSTRUCTION.**

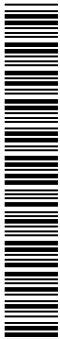
13 Nothing in this Act is intended to modify section
14 1062(b) of the National Defense Authorization Act for
15 Fiscal Year 2000 (Public Law 106–65).

16 **SEC. 7. EXEMPTION FROM SEQUESTRATION.**

17 The Spectrum Relocation Fund shall be exempt from
18 reduction under any order issued under section 254 of the
19 Balanced Budget and Emergency Deficit Control Act of
20 1985, as amended.

21 **SEC. 8. REPORT.**

22 The National Telecommunications and Information
23 Administration shall submit an annual report to the Com-
24 mittees on Appropriations and Energy and Commerce of
25 the House of Representatives, the Committees on Appro-



1 priations and Commerce, Science, and Transportation of
2 the Senate, and the Comptroller General on—

3 (1) the progress made in adhering to the
4 timelines applicable to relocation from eligible fre-
5 quencies required under section 118(d)(2)(A) of the
6 National Telecommunications and Information Ad-
7 ministration Organization Act, separately stated on
8 a communication system-by-system basis and on an
9 auction-by-auction basis; and

10 (2) with respect to each relocated communica-
11 tion system and auction, a statement of the estimate
12 of relocation costs required under section 113(g)(4)
13 of such Act, the actual relocations costs incurred,
14 and the amount of such costs paid from the Spec-
15 trum Relocation Fund.

